

MT LEGISLATIVE HISTORY

Chapter 451 1981

Bill H 364 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Highways

Hearing Date(s) _____ C

Hearing Date(s) _____ C

_____ C

_____ C

11/30 ☒ C

3/10 ☒ C

_____ C

_____ C

Date Out 2/19 ☒ C

3/19 ☒ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____

Report _____

SOCIETY TO CREATE A TRAVELING ARCHIVAL ACTIVITY.

INTRODUCED: 1/20

REFERRED TO COMMITTEE ON APPROPRIATIONS: 1/20

HEARING: 3/18

BILL DIED IN COMMITTEE

HB 363---MC BRIDE, HEMSTAD, ANDERSON, ET AL---TO REVISE AND CLARIFY MONTANA'S CODE OF ETHICS TO IMPROVE ENFORCEMENT AND TO MAKE IT MORE STRINGENT.

INTRODUCED: 1/20

REFERRED TO COMMITTEE ON JUDICIARY: 1/20

HEARING: 1/30

REPORT: DO NOT PASS, 1/30

REPORT: ADOPTED, 1/30

BILL KILLED: 2/2 YEAS: 61; NAYS: 37

HB 364---VINCENT, CONN---TO PROVIDE MANDATORY SENTENCES FOR DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS....

FISCAL NOTE: REQUIRED

INTRODUCED: 1/20

REFERRED TO COMMITTEE ON JUDICIARY: 1/20

HEARING: 1/30

REPORT: DO PASS AS AMENDED, 2/19

ON MOTION, 2/21, PASSED CONSIDERATION TO THE 44TH LEGISLATIVE DAY.

2ND READING: 2/24, YEAS: 79; NAYS: 17

3RD READING: 2/25, YEAS: 76; NAYS: 22

TRANSMITTED TO SENATE: 2/25

REFERRED TO COMMITTEE ON HIGHWAYS AND TRANSPORTATION: 3/3

HEARING: 3/10

REPORT: 3/20, ADVERSE REPORT, YEAS: 19; NAYS: 25

2ND READING: 3/23, YEAS: 32; NAYS: 17

ON MOTION, 3/25, RECOMMEND TO 2ND READING, YEAS: 27; NAYS: 18

2ND READING: 3/26, AS AMENDED, YEAS: 40; NAYS: 7

3RD READING: 3/28, YEAS: 39; NAYS: 10

RETURNED TO HOUSE WITH AMENDMENTS: 3/28

2ND READING: 4/8, YEAS: 72; NAYS: 11

3RD READING: 4/9, YEAS: 81; NAYS: 15

TRANSMITTED TO GOVERNOR: 4/15

ACTION: SIGNED, 4/20

CHAPTER 451

HB 365---BURNETT---PROVIDING FOR TERMINATION OF SOCIAL SECURITY COVERAGE FOR SCHOOL DISTRICT EMPLOYEES.

FISCAL NOTE: REQUIRED

INTRODUCED: 1/20

REFERRED TO COMMITTEE ON EDUCATION: 1/20

HEARING: 1/30

REPORT: DO NOT PASS, 2/4

REPORT: ADOPTED, 2/6

BILL KILLED: 2/6 YEAS: 89; NAYS: 4

HB 366---MOORE, THOMAS---TO PROVIDE A MONTANA FAMILY PRACTICE RESIDENCY PROGRAM.

FISCAL NOTE: REQUIRED

INTRODUCED: 1/20

HOUSE BILL NO. 364

INTRODUCED BY VINCENT, CONN

IN THE HOUSE

January 20, 1981	Introduced and referred to Committee on Judiciary.
January 22, 1981	Fiscal note requested.
January 27, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks. Second reading, pass con- sideration until 44th legislative day.
February 24, 1981	Second reading, do pass as amended. On motion rules suspended and bill placed on third reading this day.
February 25, 1981	Correctly engrossed. Third reading, passed. Ayes, 76; Nays, 22. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Highways and Transportation.
March 20, 1981	Committee recommend bill be not concurred in. Report not adopted. On motion placed on second reading.

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March 23, 1981 Second reading, concurred in.
March 25, 1981 On motion taken from third
reading and referred to
second reading. Motion adopted.
March 26, 1981 Second reading, concurred in
as amended.
March 28, 1981 Third reading, concurred in
as amended. Ayes, 39; Noes, 10.

IN THE HOUSE

March 28, 1981 Returned from Senate with
amendments.
April 8, 1981 Second reading, amendments
concurred in.
April 9, 1981 Third reading, amendments
concurred in. Ayes, 31;
Noes, 15. Sent to enrolling.
Reported correctly enrolled.

HOUSE BILL NO. 364

INTRODUCED BY VINCENT CORR

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A PERSON WITH 0.10 PERCENT ALCOHOL IN HIS BLOOD IS GUILTY OF DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL; TO INCREASE, AND ESTABLISH MINIMUM PENALTIES; TO LEVY A PENALTY ASSESSMENT TO BE USED TO FUND DRIVER SERVICES PROGRAMS AND A STATEWIDE ALCOHOL SAFETY ACTION PROGRAM; AMENDING SECTIONS 61-8-101, 61-8-401, AND 61-8-714, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application -- exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of alcohol or drugs, shall apply upon highways and elsewhere throughout anywhere within the state.

(2) The operation of motor vehicles directly across

the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 2. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714~~(1)~~ 61-8-714 for any person who is under the influence of:

~~(a) -- alcohol to drive or be in actual physical control of a motor vehicle upon the highways of this state;~~

~~(b) -- a narcotic drug to drive or be in actual physical control of a motor vehicle within this state; or~~

~~(c) -- any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state; alcohol or any drug or the combined influence of alcohol or any drug to;~~

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1 (a) drive a vehicle within this state; or
 2 (b) be in actual physical control of a vehicle within
 3 this state.
 4 (2) A person is guilty of driving while under the
 5 influence of alcohol or any drug if he drives a vehicle
 6 within this state while:
 7 (a) he has 0.10% or more by weight of alcohol in his
 8 blood as shown by chemical analysis of his breath, blood, or
 9 other bodily substance made under 61-8-402; or
 10 (b) he is under the influence of or affected by
 11 alcohol or any drug; or
 12 (c) he is under the combined influence of or affected
 13 by alcohol and any drug.
 14 (3) (a) A person is guilty of being in actual
 15 physical control of a motor vehicle while under the
 16 influence of alcohol or any drug if he has actual physical
 17 control of a vehicle within this state while:
 18 (i) he has 0.10% or more by weight of alcohol in his
 19 blood as shown by chemical analysis of his breath, blood,
 20 other bodily substance made under 61-8-402;
 21 (ii) he is under the influence of or affected by
 22 alcohol or any drug; or
 23 (iii) he is under the combined influence of or affected
 24 by alcohol and any drug.
 25 (b) No person may be convicted under this subsection

1 if, prior to being pursued by a law enforcement officer, he
 2 has moved the vehicle safely off the roadway.
 3 (2)(4) The fact that any person charged with a
 4 violation of subsection (1) is or has been entitled to use
 5 such a drug under the laws of this state does not constitute
 6 a defense against any charge of violating subsection (1).
 7 (3)(5) In any criminal prosecution for a violation of
 8 subsection (1) of this section relating to driving or being
 9 in actual physical control of a vehicle while under the
 10 influence of alcohol or any drug, if the amount of alcohol
 11 in the defendant's blood at the time alleged, as shown by
 12 chemical analysis of the defendant's blood, urine, breath,
 13 or other bodily substance, shall give rise to the following
 14 presumptions:
 15 (a) If there was at that time 0.05% or less by weight
 16 of alcohol in the defendant's blood, it shall be presumed
 17 that the defendant was not under the influence of alcohol;
 18 (b) If there was at that time in excess of 0.05% but
 19 is less than 0.10% by weight of alcohol in the defendant's
 20 blood, that fact shall not give rise to any presumption that
 21 the defendant was or was not under the influence of alcohol
 22 but such fact may be considered with other competent
 23 evidence in determining the guilt or innocence of the
 24 defendant.
 25 (c) If there was at that time 0.10% or more by weight

~~of alcohol in the defendant's blood; it shall be presumed that the defendant was under the influence of alcohol.~~

~~(4)(b) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.~~

~~(5)(1) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through (4) (b) of this section, with the word "state" in subsection subsections (1), (2) and (3) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided in the ordinance. If the ordinance is as or more stringent than the state's provisions."~~

Section 3. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1)

Every A person who is convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 1 day or more than 1 year, and by a fine of not less than \$100 or more than \$500. The person shall, in addition, be required to complete a course at an alcohol information school approved by the department of social and rehabilitation services. One day of the jail sentence may not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's

physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500 to which may be added, in the discretion of the court, \$750 and by imprisonment for a term not less than 7 days or more than 30 days. Three days of the jail sentence may not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. If such person at the time of a second or subsequent conviction is without a license or permit because of a previous suspension or

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1 revocation, the minimum mandatory sentence shall be 90 days
 2 in jail and a \$200 fine. The penalty so imposed may not be
 3 suspended or deferred.

4 ~~(2)(5) Except as otherwise provided in this section,~~
 5 ~~the court may in its discretion, suspend the execution of~~
 6 ~~any sentence imposed under subsection (1) on the condition~~
 7 ~~that the defendant successfully complete a course in a~~
 8 ~~driver improvement school approved by the court or an~~
 9 ~~alcohol treatment program approved by the department of~~
 10 ~~institutions. In addition to any nonsuspendable and~~
 11 ~~nondeferrable jail sentence required by subsections (2) or~~
 12 ~~(3), the court shall, on a second or subsequent conviction,~~
 13 ~~sentence a person to a term of imprisonment not exceeding~~
 14 ~~180 days and shall suspend but may not defer the sentence~~
 15 ~~for a period not exceeding 2 years. The suspension of the~~
 16 ~~sentence may be conditioned upon nonrepetition, alcohol or~~
 17 ~~drug treatment, supervised probation, attendance of an~~
 18 ~~educational program, or other conditions that may be~~
 19 ~~appropriate. The sentence may be imposed in whole or in part~~
 20 ~~upon violation of a condition of suspension during the~~
 21 ~~suspension period.~~ Each school or institution providing such
 22 education or treatment shall, at the commencement of the
 23 education or treatment, notify the court that the defendant
 24 has been accepted by the school or treatment program. If the
 25 defendant fails to attend the school or the treatment

1 program, the school or institution shall notify the court of
 2 the failure.

3 (6) There shall be levied and paid into a highway
 4 safety fund of the state treasury a penalty assessment in
 5 the minimum amount of 25% of, and which shall be in addition
 6 to, any fine, bail forfeiture, or costs on all offenses
 7 involving a violation of any state statute or city or county
 8 ordinance relating to driving a motor vehicle while under
 9 the influence of alcohol or any drug or being in actual
 10 physical control of a motor vehicle while under the
 11 influence of alcohol or any drug. All funds shall be for the
 12 exclusive use of the state for driver services programs and
 13 for a statewide alcohol safety action program or other
 14 similar programs designed primarily for the rehabilitation
 15 or control of traffic offenders. Such penalty assessment
 16 shall be included in any bail schedule and shall be included
 17 by the court in any pronouncement of sentence. The penalty
 18 assessment may not be suspended, waived, modified, or
 19 deferred in any respect.

20 (3)(7) For the purpose of determining the number of
 21 convictions under this section, "conviction" means a final
 22 conviction, as defined in 45-2-101, or a forfeiture of bail
 23 or collateral deposited to secure the defendant's appearance
 24 in court, which forfeiture has not been vacated. An
 25 offender is considered to have been previously convicted for

1 the purposes of this section if less than 5 years have
2 elapsed between the commission of the present offense and a
3 previous conviction."

4 Section 4. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

-End-

HB 364

JUDICIARY COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
348	To submit to the qualified electors an amendment to the MT. Cons. to require a 2/3 vote of each House of the legislature amending or rep. law acted by initiative.	1/19/81	Metcalf	2/4/81	Do Not Pass 2/5/81	2/6/81
359	Setting a fee of \$25 for an application for permission to carry a concealed weapon.	1/20/81	Quilici, Keyser, et al.	1/27/81	Tabled 2/4/81	
361	To provide for permanent incarceration of third felony offenders.	1/20/81	Brand	1/30/81	Do Not Pass 1/30/81 (Minority Report)	1/30/81
		2/2/81			Tabled 2/19/81	
363	To revise and clarify Montana's code of ethics to improve enforcement and to make it more stringent.	1/20/81	McBride, Hemstad, Anderson, et al.	1/30/81	Do Not Pass 1/30/81	1/30/81
364	Providing a person with .10% alcohol in his blood is guilty of driving or in control of a motor vehicle while under the influence of alcohol.	1/20/81	Vincent Conn	1/30/81	Do Pass as Amended 2/19/81	2/19/81
379	Increasing the maximum sentence for criminal violations of the Montana Securities Act.	1/20/81	Hemstad, Smith	1/30/81	Do Pass 1/30/81	1/30/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
January 30, 1981

The meeting of the House Judiciary Committee was called to order by Chairman Kerry Keyser at 8:00 a.m. in Room 437 of the Capitol. All members were present except REP. TEAGUE, who was excused. Jim Lear, Legislative Council, was present.

HOUSE BILL 361 REP. BRAND, chief sponsor, stated this bill permits incarceration of third felony offenders. It is based on an Oregon law. Two judges, BRAND spoke with, are in favor of this type of legislation. REP. BRAND stated one of the judges expressed to him that if a third felony is committed the person will never be corrected and something should be done.

There were no proponents.

Opponent KAREN MIKOTA, League of Women Voters, opposes this bill since it does not discriminate between one felony or another.

There were no further opponents.

REP. BRAND closed the bill.

REP. HANNAH asked what type of felonies would make this bill acceptable to the League. MIKOTA stated indiscriminate felonies not committing crimes against people.

REP. KEEDY asked MIKOTA if she is opposed to the present law. It was stated no.

REP. KEEDY stated page 1, line 19 requirements would be less than five years. Under existing law 46-18-502 a judge now can mandate when a felony is imposed from 5 to 10 years. KEEDY inquired how would it be possible for a felony offender to commit a felony before he is let out of prison since he would be there for a minimum of five years. REP. BRAND stated that is a problem.

REP. KEEDY noted the fiscal note. CURT CHISHOLM, Department of Institutions, stated he does not feel it will impact the prisons much. If the judges started to give out persistent felony offenders designation it would increase the prison population a lot. There are only 5-10 persistent offenders designated as persistent. About 7000 individuals who could be convicted are within one more felony as being designated persistent.

That ended the discussion on House Bill 361.

HOUSE BILL 363 REP. MCBRIDE, chief sponsor, stated this bill is to revise and clarify Montana's code of ethics to improve enforcement and to make it more stringent.

Page 1, lines 16-22 define public trust. It clarifies what employees of the state or officials may not do. Page 2, section 2 deals with rules of conduct. Page 3, section 3, lines 18-21 deal with guidelines

for public employees and officials. Page 5, line 15 clarifies the whole section on voting, an example is teachers voting on teacher's issue. It clarifies it is not a breach of ethical conduct. Page 6, line 10 adds language to what may constitute misconduct.

ALLEN OSTBY, Common Cause, feels this bill would restore the public's confidence.

There were no further proponents.

There were no opponents.

In closing, REP. MCBRIDE stated the bill gives guidelines and helps restore the public's interest.

REP. HANNAH questioned economic benefit. REP. MCBRIDE gave an example of a bill dealing with hunting privileges. If there was a person who lived in that area and would benefit economically, he would have a conflict of interest.

REP. DAILY asked if there is a problem in the legislature with this. REP. MCBRIDE stated she did not introduce the bill to address a particular problem. She stated we all need the types of guidelines stated in the bill. REP. MCBRIDE stated everyone has economic interests in one thing or another. The changes in the bill would not change the privacy act.

REP. CURTISS asked if this bill passed would legislators be required to publish official statements of disclosure. REP. MCBRIDE stated she did not know the effect of that.

HOUSE BILL 364 REP. VINCENT, chief sponsor, stated a lot of people talked to him about problems of this bill, however, no one had objections to the bill after he explained it to them. This bill would provide that a person with .10 percent alcohol in his blood is guilty of driving or being in control of a motor vehicle within this state while under the influence of alcohol.

REP. VINCENT explained the problem with the bill is based on Washington State constitution with a similar bill they had. In Washington, taking a test for alcohol .10 percent in the system has been ruled out because you would have to have had an attorney present to administer the test at the scene. There were 275 fatal accidents in 1975. There were 332 fatalities involved; 164 involved at least one driver drinking. Many of the accidents involve an innocent victim.

The bill calls for a mandatory one day jail sentence on the first offense. There is little flexibility. The prospect is if a person is found guilty of DWI he might be deterred from doing it again.

REP. VINCENT stated Swedish law states a person loses his license, there is a jail sentence, and a fine on the first offense of drunk driving. The fine for shooting a deer out of season in Montana is higher than DWI on the first offense.

MIKE MURRAY, Department of Justice, supports the bill. He feels page 5, lines 21-23 should be amended to read "to complete an alcohol information school at an alcohol treatment program approved by the Department of Institutions." MURRAY gave EXHIBIT 1 with the proposed change.

ALBERT GOKE, Highway Safety, supports the intent of the bill. GOKE feels there is a serious problem. If properly worded this bill could read to support alcohol schools. GOKE stated the final section of the bill is seriously flawed as far as the constitution. The individual should pay for the cost of the school.

MIKE MCGRATH, Department of Justice, supports the intent of the bill. MCGRATH handed out EXHIBIT 2 which lists areas of concern identified by the Department of Justice.

D. B. TOOLEY, Montana Highway Patrol, supports the intent of the bill to get the drunk driver off the road. His records indicate currently 45-50% of the people who are arrested for drunk driving are currently attending schools. He feels it would be a good idea to be mandatory.

There were no further proponents.

There were no opponents.

REP. VINCENT stated in closing he was sorry he could not correct the problems of the bill before it came to the committee.

REP. CURTISS asked if there would be a duplication of effort with alcohol programs. REP. VINCENT replied the intent was not to duplicate. REP. EUDAILY asked about the school. It was replied the alcohol school is an information school of five sessions, two hours each. They have educational means of getting across information about alcohol, drinking and driving, etc. They are able to distinguish the people who got caught drinking and driving as compared to the person who cannot make a decision on alcohol.

REP. BENNETT asked if penalties reduce the drinking and driving. REP. VINCENT did not know.

CHAIRMAN KEYSER suggested the sponsor and witnesses get together to work out possible amendments to bring back to a subcommittee.

HOUSE COMMITTEE

Date 1/30/81

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Suggested Modifications of HB 364

DARRYL BRUNO, Chief

Community and Program Development Bureau

Alcohol and Drug Abuse Division

Department of Institutions

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Lines 21-23: to complete an alcohol information school
at an alcohol treatment program approved
by the Department of Institutions.

TESTIMONY PRESENTED TO THE HOUSE JUDICIARY COMMITTEE

47th Legislature

By The Department of Justice

H.B. 364

30 January 1981

The following items are areas of concern identified by the Department of Justice after a preliminary review of H.B. 364 regarding D.U.I. (sections 61-8-101, 61-8-401, and 61-8-714, MCA):

1. The proposed legislation departs from existing law which establishes presumptions for driving under the influence of alcohol. Under the proposed legislation a blood alcohol reading of .10 percent or more is a per se violation of the criminal statute. This approach to D.U.I. is apparently adopted from statutes of the state of Washington. The Supreme Court of the United States in Washington v. Fitzsimmons, Docket No. 80-365 (decided last year), was faced with a challenge to the procedures followed under Washington's per se law. The Court held that the breathalyzer test was a "critical stage" in criminal proceedings and that therefore legal counsel must be present in every case unless waived. This decision puts the taking of a breathalyzer test in the same category with custodial investigation by law enforcement (Miranda Situations) and police lineups in every state with a per se D.U.I. law. In Montana, it would mean that a D.U.I. suspect arrested in Colstrip at 2 a.m. would have to be transported to Forsyth and an attorney summoned to witness the testing process. We've begun to build considerable, favorable case law under present law and haven't had a serious problem with convictions. Also, under the implied consent law, many defendants may refuse to take a breathalyzer and take their chances in the courts.

2. Unlike existing law, there is no specificity in the proposed legislation as to the degree to which a drug must affect driving to constitute a violation. Therefore, under the terms of the legislation as proposed, a person could conceivably be convicted of D.U.I. while operating under the effects of his morning cup of coffee. Ref. Sec. 61-8-401(1)(c); H.B. 364, sec. 2.

3. The proposed legislation imposes an assessment on bail and penalties to fund driver services programs and a statewide alcohol safety action program. A similar statute was enacted in

1965 to fund the operations of driver education programs in the Montana high schools. In Sanders v. Butte, 151 Mont. 171 (1968), the Montana Supreme Court struck down the assessment established by the Legislature. The Court characterized the assessment on bail as "... an unreasonable toll, tax fee, penalty, assessment, or what have you on a man's liberty. As such it is a deprivation of due process under (the Constitution of Montana)." The assessment on fines was struck down on other constitutional grounds.

4. Section 1 of the bill, in broadening the application of the D.U.I. statutes to areas other than simply on Montana highways is covered by H.B. 162, introduced by Rep. Gould, which has already passed in the House. However, the exception created in section 2 of H.B. 364 (top of page 4) (for physical control) would leave us with a law which is more liberal than existing statutes. Under the exception, an individual stuck in the median or in the borrow pit with the engine running and passed out against the steering wheel would not be in violation of the law. This is so because the definition of roadway in the vehicle codes is significantly narrower than the definition of highway -- which includes the entire width of the right-of-way.

5. The potential jail term for a second offense of D.U.I. under the proposed legislation is shorter than that for a first offense. The maximum penalty provided here for a second offense is thirty days, first offense is one year. Ref. H.B. 364, sec. 3.

6 The enhanced penalty for a D.U.I. conviction while an individual's license is suspended or revoked could result in a situation in which an individual's license which had been suspended for alteration or for accumulating fifteen points within three years would suffer an enhanced penalty on first conviction of D.U.I.

7. An ambiguity is created in H.B. 364 at page 5 regarding the authority given to municipalities. Does the Legislature intend to allow municipalities to create their own definitions of D.U.I. as long as the definition is "more stringent" than the state's definition? Does the Legislature intend that municipalities may impose penalties for D.U.I. more stringent than provided for in the state statute? The Supreme Court has held it to be inappropriate to expand the authority of a lower court without a specific legislative enactment.

8. To the extent that increased penalties without provision for suspended sentences increase pressures for reduction of D.U.I.s to reckless driving (a not infrequent practice even under the present law), the Division of Motor Vehicles' ability to suspend

or revoke the driver license of a drunken driver will be impaired. For example, an individual convicted of first offense D.U.I. loses his license for six months. An individual convicted a second or subsequent time within five years has his license revoked for a period of one year. On the other hand, an individual would have to be convicted of reckless driving three times within a single year in order to have his license revoked.

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 19, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. by Chairman Kerry Keyser, in Room 437 of the Capitol. All members were present. Jim Lear, Legislative Council, was present.

HOUSE BILL 795 REP. COZZENS, chief sponsor, stated the bill lays out the stages of involuntary commitment of alcoholism. The purpose is to revise the law pertaining to the involuntary commitment of alcoholics allowing the certifying physician's testimony to be submitted by affidavit and allowing the taking of his deposition; and amending section 53-24-302, MCA. Page 2 and 3 are designed to allow the option for an affidavit or deposition.

DICK BAUMBERGER, Alcohol Programs of Montana, feels that the process is quite cumbersome and this bill would solve those problems. Some judges don't understand what the present law does. Usually there is not an administrator in the rural area.

CURT CHISHOLM, Department of Institutions, was a proponent but felt the bill had problems. If an alcohol counselor or a doctor signs an affidavit it will create problems in that the accused should be able to cross examine. The person should have the right to subpoena and have a licensed doctor of his choosing at the hearing. A problem in smaller rural areas is that alcoholics have difficulty in obtaining a doctor there. EXHIBIT 1 was given.

There were no further proponents.

There were no opponents.

In closing, REP. COZZENS stated the wording on page 2 and 3 does not preclude the doctor from the hearing. The person may have the doctor of his choice testify, or it would allow the doctor to present an affidavit. There is a concern this might open the door to make alcohol counseling centers mandatory. This is not the intent of the bill.

REP. HANNAH asked about deposition. NICK ROTERING, Department of Institutions, replied a deposition cannot be arranged for in less than 3 weeks. Any objection an attorney has will set it back farther. The time delay does not help the alcoholic.

REP. YARDLEY asked about involuntary commitment. CHISHOLM replied a professional health person's opinion must be given in court.

REP. CURTISS asked if this bill was at the request of the Department of Institutions. The sponsor said it was not but alcohol treatment centers would like it passed.

Judiciary Committee
February 19, 1981
Page 3

REP. DAILY moved do pass as amended. The bill passed with SHELDEN, YARDLEY and HUENNEKENS voting no.

HOUSE BILL 284 REP. BROWN moved do pass.

REP. BROWN moved to adopt the amendments as given to the committee earlier. REP. BROWN moved to strike on the amendments (2)(b); and to strike chapter 23, part 2 on the last two lines of the bill where it appears the second time. The amendment carried.

REP. BROWN moved do pass as amended. The motion carried.

HOUSE BILL 361 REP. HUENNEKENS moved do not pass.

REP. CURTISS made a substitute motion to table the bill. The substitute motion carried.

HOUSE BILL 364 REP. BROWN moved do not pass.

REP. CONN made a substitute motion of do pass. REP. CONN offered the amendments as in EXHIBIT 2. The amendment passed with IVERSON, BROWN, DAILY, BENNETT, TEAGUE and HUENNEKENS voting no.

REP. HANNAH moved to strike "not less than" and to strike "or more than one day" and to insert "in the county jail" on the amendment. The motion carried.

REP. HANNAH moved do pass as amended. The bill passed.

HOUSE BILL 595 REP. HUENNEKENS moved do not pass. He stated we cannot ignore the fact that we may lose federal funds.

REP. IVERSON made a substitute motion of do pass. REP. MCLANE seconded the motion. REP. IVERSON stated people don't function well at 55 mph.

REP. CONN stated the legislature should have respect for the federal laws. If the Reagan administration sees fit then we should abide by their rulings.

REP. HANNAH moved on page 2, line 13 to insert "in state" and strike the rest of the line.

REP. EUDAILY made a substitute motion to adopt the amendments as proposed by REP. SIVERTSEN in his testimony. The substitute motion carried.

20

Substitute Bill for HB 364

1. Title, lines 4 through 11.

Following: "AN ACT TO PROVIDE"

Strike: lines 4 through 11 in their entirety

Insert: "MANDATORY SENTENCES FOR DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 61-8-714, MCA."

2. Pages 1 through 9.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1) Every A person who ~~is convicted of a violation of 61-8-401~~ ^{in the course of} shall be punished by imprisonment ~~for not less than 1 day or more than 1 day,~~ and by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500; ~~to which may be added, in the discretion of the court;~~ and by imprisonment for ~~a term not less than 7 days or more than 30 days.~~ Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

~~(4)~~ (4) Except ~~as otherwise~~ for nonsuspendable jail sentences provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under ~~subsection (1)~~ this section on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

~~(5)~~ (5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction

MINUTES OF THE MEETING
HIGHWAY AND TRANSPORTATION COMMITTEE
MONTANA STATE SENATE

March 10, 1981

The sixteenth meeting of the Highways and Transportation Committee was called to order on the above date in Room 410 of the State Capitol Building by Chairman Mark Etchart at 1:00 p.m.

ROLL CALL:

Present: Senator Etchart, Senator Hager, Senator Hazelbaker, Senator Elliott, Senator Tveit, Senator Graham, Senator Healy, Senator Stimatz. Absent: Senator Manning.

CONSIDERATION OF HOUSE BILL NO. 364:

Representative Vincent, District 78, Bozeman, Chief Sponsor of HB364 told the committee this is an act to provide mandatory sentences for driving or being in control of a motor vehicle within this state while under the influence of alcohol or drugs; to require defendants to participate in an alcohol information course. Including alcohol or drug treatment if considered necessary; amending section 61-8-714, MCA.

Representative Vincent told the committee this is not only an important bill, but it is a major step, if we decide to take it. The bill provides for mandatory sentencing on a DWI charge. For the first time in many years, the House decided to increase the penalties. In the last six years, we have increased the fines and sentences on third offenses. There is a serious problem in Montana. One half of the people killed in accidents, involved a drunk driver. We need to address that problem seriously and come up with some kind of system that will cut that percentage down. When I started to draft this bill, I wanted to get a balance between punitive and rehabilitative. I know that punishment alone is not enough to solve the problem. We need to combine punishment with rehabilitation. When a person is convicted of DWI for the first time, they shall be imprisoned in the county jail for one (1) day and by a fine not less than \$100 and not more than \$500. The fines have remained the same. The jail sentence would be mandatory. On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500 and by imprisonment for not less than 7 days or more than 30 days. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than \$500 or more than \$1,000. The punitive aspect of this bill would be the deterrent. And, if this bill in any way, would deter, then I think it would be a big plus for the state of Montana. Also, in addition to the punishment provided, the

March 10, 1981

defendant shall complete an alcohol information course at an alcohol treatment program approved by the Department of Institutions which may include alcohol or drug treatment or both if considered necessary by the counselor conducting the program.

Representative Vincent said we should do the best job we can to prevent that person from doing that again. I believe the rehabilitation aspect of the bill will work and offset the punitive side, which will be the deterrent. After I got this bill into the House, I called my brother, who was convicted on three DWI's and asked him if he thought this bill has any potential for being a deterrent. He told me there are certain people that no law will deter and then there are some people who are on the fence. He had heard a lot of conversation that this would be a deterrent.

Representative Vincent told the committee the State of Washington, where his brother lives, has a similar law that went into effect about a year ago. This bill will not solve the problem, but if it saves some lives, then I think that it would be more than worth it. It mandates punishment and mandates rehabilitation. It is a step in the right direction. Right now, if you shoot a deer out of season in Montana, you will be punished more than you would be on a first DWI charge. It just seems to make sense that punishment for DWI should be more strict than shooting a deer out of season.

Senator Etchart asked if there were any other proponents to HB364.

Candis Compton, Helena, representing the Alcohol and Drug Abuse, Dept. of Institutions, told the committee they support this bill. She addressed the rehabilitation aspect of the bill. A little education can go a long way. The risk of having an accident is twenty five times greater if you have alcohol in your system. When people have alcohol in their system at a certain level, the chances of them being just a social drinker is small. Two-thirds of the people stopped for DWI are problem drinkers. The Alcohol Information Course, or Court School, is a ten hour education session about alcohol. It is also a screening session, in that it is at this time you can separate the social drinker from the problem drinker. The course is designed to do this.

Jo Kaste, Alcoholism Programs of Montana, said he agreed with previous testimony and they strongly support this bill.

Jan Brown, representing the Association of Churches, told the committee they support this bill.

March 10, 1981

Representative Shontz told the committee there were about fifty-five people killed on Montana Highways last year. I wonder how many of them could be here today, if this bill were law now. I ask for your support.

Morris W. Gullickson, representing the United Transportation Union, spoke in support for HB364. With the high death rate already in Montana this year, we have to do something different. This looks like a workable bill.

Senator Etchart asked if there were any opponents to HB364. There were none. Senator Etchart asked if there were any questions from the Committee.

Senator Hager asked Representative Vincent if this type of penalty was ever on the books before.

Representative Vincent said to his knowledge, it has not been on the books before. I have served four terms, and it has not been on the books in that time.

Senator Hager asked if there was more than one type of test to give someone for DWI.

Representative Vincent said yes, in addition to walking a straight line there is a breath-alizer. If a person has .10 alcohol in their system, they are guilty of DWI. This law only comes into effect if the person is convicted of DWI. The person would have his opportunity on his day in court. This bill was patterned after the Washington State Statutes.

Senator Elliott asked if they had given any thought to requiring the authorities to impound the car for 30 day periods for a second offense and a six month period for a third offense.

Representative Vincent said they had not given that any thought. One reason it was not considered was that there would be a lot of opposition to the bill. It would make it very hard for a person to get to and from work, etc. And, one way or another, the person would still find a way to drive. We felt you could go overboard in that regard. The revocation of the drivers license is still a possibility, unless someone drives without their license.

Representative Tveit asked if all people who drink have access to the alcohol program.

Candis Compton told the committee there is an alcohol information school offered in every county in Montana at the present time.

March 10, 1981

She further stated that some of the programs are multi-county units. It if is a long distance to the program, provisions are made for private counseling. Sometimes that counseling can be done on an outpatient basis.

Senator Elliott asked if the program was being funded by DWI fines.

Candis said there is an additional assessment of \$50.00 for entrance into the Court School. This is not a part of the fine system itself.

Representative Vincent, in closing, told the Committee he thought Representative Shontz did the best job of summing this problem up. We are talking about human lives. In going over the statistics, about 164 people died last year in Montana, because someone was drinking and driving at the same time. In many cases not only the driver died, but a victim also. I don't think this law would be a cure all, but it will help. I would suggest to the committee, that it just takes one time. It is easy to talk about this in the abstract, but as soon as it is your friend that is killed or seriously injured by somebody that has been drinking too much, then it is reality. The time has come for us to try to take some direct and forceful action to try to cut down the number of fatalities. I believe this bill will help a great deal, and would encourage you to give it a do pass recommendation.

There being no further questions the hearing was closed on HB364.

FINAL CONSIDERATION OF HOUSE BILL NO. 299:

Don Steinbeissen, representing himself and the Montana-Dakota Beet Growers, told the committee there are 240 beet growers in the area. They deliver 50,000 loads of beets in a 30 day period. They have a short time to deliver this crop, running from late September to the 20th October. During the past seven years, the grower has had to haul sugar crops longer distances. We are traveling at a very low level of speed. The roads are usually hard and dry during this time of year. The GVW personnel has, at times, been very nasty to the truck drivers. We have to haul from 5 to 10 miles. If the beets freeze, they don't have to buy the crop. At the present time, it is hard to haul loads that are legal under the existing law until we get to the scale. This is a very serious problem.

Wilbur Rupp, representing the Montana-Dakota Beet Growers and himself spoke in support of House Bill No. 299. This bill is needed to help during the harvesting of an expensive and perishable crop and delivering the said crop to the processor before foul weather hampers harvesting operations.

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ROLL CALL

SENATE HIGHWAYS & TRANSPORTATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date *Tuesday*
3-10

NAME	PRESENT	ABSENT	EXCUSED
SENATOR MARK ETCHART	✓		
SENATOR TOM HAGER	✓		
SENATOR FRANK W. HAZELBAKER	✓		
SENATOR ROGER H. ELLIOTT	✓		
SENATOR LARRY J. TVEIT	✓		
SENATOR DAVE MANNING			
SENATOR CARROLL GRAHAM	✓		
SENATOR JACK HEALY	✓		
SENATOR LAWRENCE G. STIMATZ	✓		
VERDON - Legislative Council			

DATE

3/10/81

COMMITTEE ON

Highways

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Beatifalda	Dept. of Highways	H.B. 681	✓	
Lo Kato	Alcoholism Program	364	✓	
Morris W. Erickson	UNITED TRANSPORTATION UNION	HB 681		+
Mary Nelson	WIFE	681		
John Steinbocker	farmer	299	✓	
Leonard Hagler	farmer	299	✓	
Thomas Hanson	farmer	299	✓	
Harve Steiner	farmer	299	✓	
Isabel Pearson	Farmer	299	✓	
Wilbur Rupp	Farmer	299	✓	
Frank W. Loring	Farmer	299	✓	
John Steinbocker	Farmer	299	✓	
Leonard Kleibach	Farmer	299	✓	
Norman Badt	Farmer	299	✓	
Roger Barbood	Farmer	299	✓	
Donald B. Kay	Farmer	299	✓	
John H. Beck	MT - DATE BEET GROWERS	299	✓	
John V. [unclear]	State Rep. 78	364	✓ sponsor	
Robert Anderson	Dept of Inst 4000	364	✓	
Candis Compton	Institutions - ADAD	364	✓	
Jan Brown	MT Assn of Churches	364	✓	
Ken [unclear]	United [unclear]	361	✓	
John [unclear]	St. R. H.C.	681	✓	
Quay Patton	MT Sheriff's Assoc.	502	✓	
Chuck O'Reilly	Mont. Sheriff's Assoc.	502	✓	
John Ostad	MT. Sheriff's + Peace Officers	502	✓	

DATE _____

COMMITTEE ON _____

VISITORS' REGISTER

[illegible]

NAME

DATE: 3-10-81

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT? yes

AMEND?

OPPOSE?

COMMENTS:

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NAME: JoK ste DATE: 3/10/87

ADDRESS: 219 N. Rodney

PHONE: 443-2343

REPRESENTING WHOM? Alcoholism Program of Maryland

APPEARING ON WHICH PROPOSAL: HB 364

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME MORRIS W. GORRICKSON BILL No. 4B 364
ADDRESS 323 So 6th LIVINGSTON MT. DATE 3/10/81
WHOM DO YOU REPRESENT UNITED TRANSPORTATION UNION
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITH THE HIGH DEATH RATE ALREADY IN MONTANA THIS YEAR
WE HAVE TO DO SOMETHING DIFFERENT. THIS LOOKS LIKE
A WORKABLE BILL.

NAME: Robert Anderson

DATE: 3-10-81

ADDRESS: 1539 11th Ave Helena MT.

PHONE: 449-2827

REPRESENTING WHOM? DEPT OF Institutions Alcohol & Drug Div

APPEARING ON WHICH PROPOSAL: HB 364

DO YOU: SUPPORT? yes

AMEND?

OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES OF THE MEETING
HIGHWAY AND TRANSPORTATION
MONTANA STATE SENATE

March 19, 1981

The Twentieth meeting of the Highways and Transportation Committee was called to order on the above date in Room 410 of the State Capitol Building by Chairman Marck Etchart at 1:00 p.m.

ROLL CALL:

Present: Senator Mark Etchart, Senator Tom Hager, Senator Frank W. Hazelbaker, Senator Larry J. Tveit, Senator Dave Manning, Senator Carroll Graham, Senator Jack Healy, and Senator Lawrence G. Stimatz. Absent: Senator Roger H. Elliott.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 27:

Representative Quilici, Chief Sponsor of HJR27 told the committee this is a joint resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of commercial transportation problems in Montana.

Montana is a rural state, with long distances between cities, and towns and marketing centers. The agricultural industry is vitally dependent upon adequate transportation systems to move raw products to market. The abandonment of the Milwaukee Railroad has had severe economic impact on the farm industry and all industry within Montana. Also, the Public Service Commission let Burlington Northern Trucklines discontinue intrastate service. The trucking industry in Montana is tightly regulated under Montana law. There is a trend toward deregulation of motor carriers, rail carriers, and air carriers at both the federal and state levels. Because of all these reasons, we felt a resolution requesting an interim study by a committee to study commercial transportation problems in Montana. The committee should study the following things: the effect of deregulation by the federal government and by other states, of motor carriers and rail carriers on sparsely populated rural areas like Montana; reorganization of rates such that the more lucrative trunk routes are forced to assist the less lucrative spur routes into the sparsely populated areas; and involvement of the State of Montana in providing transportation systems.

Kenneth D. Clark, United Transportation Union, told the committee they would like to shown as in support of the resolution.

Jo Brunner, W.I.F.E., told the committee they have been concerned about this for a number of years. We support this bill.

March 19, 1981

Senator Tveit made the motion that HB440 be concurred in. Vote: Aye: Etchart, Hager, Tveit, Healy, Stimatz. No: Hazelbaker, Manning, Graham. (5-3) The Motion carried.

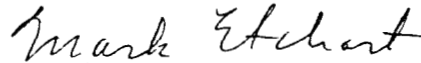
ACTION ON HOUSE BILL NO. 364:

Senator Graham told the committee he felt the one day jail sentence penalty was too rough for a first offense. He told the committee Wyoming had similar legislation they passed four years ago, and had to repeal that legislation this session because it did not work.

Senator Hager made the motion that HB364 be not concurred in. Vote: Aye: Etchart, Hager, Hazelbaker, Tveit, Graham, Healy, Stimatz. No: Manning. (7-1) The motion carried. Senator Etchart will carry the Adverse Committee Report on the floor of the Senate.

FURTHER BUSINESS AND ADJOURNMENT:

There being no further business of the committee and no further bills to hear, the hearing was closed.



Senator Mark Etchart
Chairman

cdf

ROLL CALL

SENATE HIGHWAYS & TRANSPORTATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3/19/81

NAME	PRESENT	ABSENT	EXCUSED
SENATOR MARK ETCHART	✓		
SENATOR TOM HAGER	✓		
SENATOR FRANK W. HAZELBAKER	✓		
SENATOR ROGER H. ELLIOTT			
SENATOR LARRY J. TVEIT	✓		
SENATOR DAVE MANNING	✓		
SENATOR CARROLL GRAHAM	✓		
SENATOR JACK HEALY	✓		
SENATOR LAWRENCE G. STIMATZ	✓		
VERDON - Legislative Council			

Each day attach to minutes.

SENATE COMMITTEE HIGHWAYS AND TRANSPORTATION

Date 3-19-81 HOUSE Bill No. 364 Time 2:00 p.m.

NAME	YES	NO
Senator Mart Etchart	✓	
Senator Tom Hager	✓	
Senator Frank Hazelbaker	✓	
Senator Elliott		
Senator Tveit	✓	
Senator Manning		✓
Senator Graham	✓	
Senator Healy	✓	
Senator Stimatz	✓	

(Carol Doyle Frasier)
CAROL DOYLE FRASIER
 Secretary

SENATOR MARK ETCHART
 Chairman

Motion:

DO NOT PASS

"BE NOT CONCURRED IN"

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

March 19

19 81

MR. President:

We, your committee on Highways and Transportation

having had under consideration House Bill No. 364

Vincent (Etchart)

Respectfully report as follows: That House Bill No. 364

Mc
~~REPASS~~
BE NOT CONCURRED IN

HOUSE BILL NO. 364

INTRODUCED BY VINCENT, CONN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT--A
 PERSON--WITH--9+10--PERCENT--ALCOHOL--IN--HIS--BLOOD--IS--GUilty--OF
 DRIVING--OR--BEING--IN--CONTROL--OF--A--MOTOR--VEHICLE--WITHIN--THIS
 STATE--WHILE--UNDER--THE--INFLUENCE--OF--ALCOHOL--TO--INCREASE--AND
 ESTABLISH--MINIMUM--PENALTIES--TO--LEVY--A--PENALTY--ASSESSMENT--FOR
 BE--USED--TO--FUND--DRIVER--SERVICES--PROGRAMS--AND--A--STATEWIDE
 ALCOHOL--SAFETY--ACTION--PROGRAM--AMENDING--SECTIONS--61-8-101,
 61-8-401--AND--61-8-714--MCA. MANDATORY SENTENCES FOR DRIVING
 OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE
 WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO REQUIRE
 DEFENDANTS TO PARTICIPATE IN AN ALCOHOL INFORMATION COURSE;
 INCLUDING ALCOHOL OR DRUG TREATMENT IF CONSIDERED NECESSARY;
 AMENDING SECTION 61-8-714, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1)
 Every A person who is convicted of a violation of 61-8-401
 shall be punished by imprisonment in the county jail for 1
 day, and by a fine of not less than \$100 or more than \$500.

The jail sentence may not be suspended unless the judge
 finds that the imposition of the jail sentence will pose a
 risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a
 fine of not less than \$300 or more than \$500 to which may be
 added in the discretion of the court, and by imprisonment
 for a term not less than 7 days or more than 30 days. Three
 days of the jail sentence may not be suspended unless the
 judge finds that the imposition of the jail sentence will
 pose a risk to the defendant's physical or mental
 well-being.

(3) On the third or subsequent conviction, he shall be
 punished by imprisonment for a term of not less than 30 days
 or more than 1 year, to which may be added, in the
 discretion of the court, a fine of not less than \$500 or
 more than \$1,000. Notwithstanding any provision to the
 contrary providing for suspension of execution of a sentence
 imposed under this subsection, the imposition or execution
 of the first 10 days of the jail sentence imposed for a
 third or subsequent offense that occurred within 5 years of
 the first offense may not be deferred or suspended.

(2)(4) Except as otherwise for nonsuspendable jail
 sentences provided in this section, the court may, in its
 discretion, suspend the execution of any sentence imposed
 under subsection (1) this section on the condition that the

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1 defendant--successfully--complete--a--course--in--a--driver
2 improvement--school--approved--by--the--court--or--an--alcohol
3 treatment--program--approved--by--the--department--of
4 institutions. IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS
5 SECTION, REGARDLESS OF DISPOSITION, THE DEFENDANT SHALL
6 COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL
7 TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS
8 WHICH MAY INCLUDE ALCOHOL OR DRUG TREATMENT OR BOTH IF
9 CONSIDERED NECESSARY BY THE COUNSELOR CONDUCTING THE
10 PROGRAM. Each school-or-institution COUNSELOR providing such
11 education or treatment shall, at the commencement of the
12 education or treatment, notify the court that the defendant
13 has been accepted--by--the--school ENROLLED IN A COURSE or
14 treatment program. If the defendant fails to attend the
15 school COURSE or the treatment program, the school-or-
16 institution COUNSELOR shall notify the court of the failure.

17 {3}(5) For the purpose of determining the number of
18 convictions under this section, "conviction" means a final
19 conviction, as defined in 45-2-101, or a forfeiture of bail
20 or collateral deposited to secure the defendant's appearance
21 in court, which forfeiture has not been vacated. An
22 offender is considered to have been previously convicted for
23 the purposes of this section if less than 5 years have
24 elapsed between the commission of the present offense and a
25 previous conviction."

-End-

SIXTY-SEVENTH LEGISLATIVE DAY

Helena, Montana
March 26, 1981

Senate Chambers
Capitol Building

Senate convened at 11:00 a.m., President Turnage presiding. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present except Ryan, Smith, Stimatz, excused. Quorum present.

Mr. President: We, your Committee on Bills and Journal, having examined the daily journal for the Sixty-sixth Legislative Day, find the same to be correct.

O'HARA, Chairman

REPORTS OF STANDING COMMITTEES

BILLS (O'Hara, Chairman):

Signed by the Speaker of the House and President of the Senate, 3/26/81, at the hour of 10:30 a.m., delivered to the Governor for his approval—SB 14, SB 16, SB 80, SB 120, SB 134, SB 159, SB 183, SB 187, SB 215, SB 267. Report adopted.

Correctly engrossed - SB 466, SJR 28, SJR 30, SJR 31. Report adopted.

STATE ADMINISTRATION (Story, Chairman):

SJR 32, do pass. Report adopted.

FINANCE AND CLAIMS (Himsl, Chairman):

HB 442, be concurred in. Report adopted.

FISH AND GAME (Smith, Chairman):

HB 152, third reading copy, be amended as follows:

1. Page 3, line 9.

Strike: "Civil penalty—injunction"

Insert: "Injunction"

2. Page 3, lines 10 through 17.

Strike: subsection (1) in its entirety

Renumber: subsequent subsections

3. Page 4, line 1.

Strike: "or (2)"

4. Page 4, lines 4 through 8.

Strike: subsection (4) in its entirety

And, as so amended, be concurred in. Report adopted.

Statement of Intent, HB 152, be concurred in. Report adopted.

HB 200, third reading copy, be amended as follows:

1. Title, line 8.

Strike: "TRAPPING,"

2. Page 2, line 22.

Strike: "\$2"

Insert: "\$3"

3. Page 3, line 3.

Total 0

Excused: Smith.

Total 1

Absent or not voting: Crippen, Galt, Haffey, Healy, Kolstad, O'Hara, Olson, Towe.

Total 8

Senator Manley moved that the Senate reconsider its action taken in adopting the Adverse Committee Report on Senate Bill No. 172. Motion carried by the following vote:

Ayes: Aklestad, Anderson, Berg, Blaylock, Boylan, B. Brown, S. Brown, Dover, Eck, Elliott, Etchart, Goodover, Hafferman, Hager, Halligan, Hammond, Healy, Johnson, Keating, Lee, Manley, Manning, Mazurek, McCallum, Nelson, Norman, Ochsner, O'Hara, Regan, Ryan, Severson, Stimatz, Tveit, Van Valkenburg, Mr. President.

Total 35

Noes: Conover, Haffey, Hazelbaker, Himsl, Jacobson, Stephens, Thomas.

Total 7

Excused: Smith.

Total 1

Absent or not voting: Crippen, Galt, Graham, Kolstad, Olson, Story, Towe.

Total 7

Senator Manley moved, duly carried, that Senate Bill No. 172 be taken from the Committee on Bills and Journal and rereferred to the Committee on Taxation.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator Goodover in the Chair.

Senate resumed. President Turnage in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That House Bill No. 364, third reading copy, be amended as follows:

1. Title, line 15.

Following: "NECESSARY;"

Insert: "TO PROVIDE AN EXPUNGING OF THE DEFENDANT'S RECORD AFTER 5 YEARS;"

2. Page 3.

Following: line 25

Insert: "If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record."

Amendments passed by the following vote:

Ayes: Aklestad, Anderson, Berg, Blaylock, Boylan, B. Brown, S. Brown, Conover, Crippen, Dover, Eck, Elliott, Etchart, Galt, Goodover, Graham, Hafferman, Haffey, Hager, Halligan, Hammond, Hazelbaker, Healy, Himsl, Jacobson, Johnson, Keating, Lee, Manley, Manning, Mazurek, McCallum,

Nelson, Norman, Ochsner, O'Hara, Olson, Regan, Ryan, Severson, Stephens, Stimatz, Story, Thomas, Towe, Tveit, Van Valkenburg, Mr. President.

Total 48

Noes: None.

Total 0

Excused: Smith.

Total 1

Absent or not voting: Kolstad.

Total 1

That House Bill No. 364, third reading copy, be amended as follows:

1. Page 1, line 24.

Following: line 23

Strike: "shall"

Insert: "may, in the discretion of the court,"

2. Page 1, lines 24 and 25.

Following: "for"

Strike: "1 day"

Insert: "up to 24 hours"

3. Page 1, line 25.

Following: "and"

Insert: "shall be punished"

Amendments passed by the following vote:

Ayes: Aklestad, Berg, Blaylock, Conover, Crippen, Elliott, Etchart, Galt, Goodover, Graham, Hafferman, Haffey, Halligan, Hammond, Healy, Himsl, Jacobson, Keating, Manley, Manning, McCallum, Nelson, Norman, Olson, Regan, Severson, Stephens, Stimatz, Tveit, Van Valkenburg, Mr. President.

Total 31

Noes: Anderson, Boylan, B. Brown, S. Brown, Dover, Eck, Hager, Lee, Mazurek, Ochsner, O'Hara, Ryan, Story, Thomas, Towe.

Total 15

Excused: Smith.

Total 1

Absent or not voting: Hazelbaker, Johnson, Kolstad.

Total 3

That House Bill No. 364, as amended, be concurred in by the following vote:

Ayes: Aklestad, Anderson, Berg, Blaylock, Boylan, B. Brown, S. Brown, Conover, Crippen, Dover, Eck, Elliott, Galt, Goodover, Graham, Hafferman, Haffey, Hager, Halligan, Hammond, Hazelbaker, Healy, Jacobson, Johnson, Keating, Lee, Manning, Mazurek, McCallum, Nelson, Ochsner, O'Hara, Severson, Stephens, Stimatz, Story, Thomas, Towe, Tveit, Mr. President.

Total 40

Noes: Etchart, Himsl, Manley, Norman, Olson, Ryan, Van Valkenburg.

Total 7

Excused: Smith.

Total 1

Absent or not voting: Kolstad, Regan.

Total 2

That House Bill No. 403 be concurred in by the following vote:

Ayes: Aklestad, Anderson, Berg, Blaylock, Boylan, B. Brown, S. Brown, Conover, Crippen, Dover, Eck, Elliott, Etchart, Galt, Goodover, Graham, Hafferman, Haffey, Hager, Halligan, Hammond, Hazelbaker, Healy, Himsl, Jacobson, Johnson, Keating, Lee, Manley, Manning, Mazurek, McCallum, Nelson, Norman, Ochsner, O'Hara, Olson, Regan, Ryan, Severson, Stephens, Stimatz, Story, Thomas, Towe, Tveit, Van Valkenburg, Mr. President.

Total 48

Noes: None.

Total 0

Excused: Smith.

Total 1

Absent or not voting: Kolstad.

Total 1

That House Bill No. 437 be concurred in by the following vote:

Ayes: Aklestad, Anderson, Berg, Blaylock, Boylan, B. Brown, S. Brown, Conover, Crippen, Dover, Eck, Elliott, Etchart, Galt, Goodover, Graham, Hafferman, Haffey, Hager, Halligan, Hammond, Hazelbaker, Healy, Himsl, Jacobson, Johnson, Keating, Lee, Manley, Manning, Mazurek, McCallum, Nelson, Norman, Ochsner, O'Hara, Olson, Regan, Ryan, Severson, Stephens, Stimatz, Story, Thomas, Towe, Tveit, Van Valkenburg, Mr. President.

Total 48

Noes: None.

Total 0

Excused: Smith.

Total 1

Absent or not voting: Kolstad.

Total 1

That House Bill No. 480 be concurred in by the following vote:

Ayes: Aklestad, Anderson, Berg, Blaylock, Boylan, B. Brown, S. Brown, Conover, Crippen, Dover, Eck, Elliott, Etchart, Galt, Goodover, Graham, Hafferman, Haffey, Hager, Halligan, Hammond, Hazelbaker, Healy, Himsl, Jacobson, Johnson, Keating, Lee, Manley, Manning, Mazurek, McCallum, Nelson, Norman, Ochsner, O'Hara, Olson, Regan, Ryan, Severson, Stephens, Stimatz, Story, Thomas, Towe, Tveit, Mr. President.

Total 47

Noes: Van Valkenburg.

Total 1

Excused: Smith.

Total 1

Absent or not voting: Kolstad.

Total 1

That House Bill No. 504 be concurred in by the following vote:

Total 48

Noes: None.

Total 0

Excused: Smith.

Total 1

Absent or not voting: Kolstad.

Total 1

That the Committee rise and report. (Goodover, Chairman)

Upon motion of Senator Goodover, duly carried, the foregoing Report of the Committee of the Whole was adopted.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 2.

REPORTS OF STANDING COMMITTEES

LOCAL GOVERNMENT (McCallum, Chairman):

HB 33, third reading copy, be amended as follows:

1. Page 2, line 2.
Following: "~~51%~~"
Strike: "~~66%~~"
Insert: "~~51%~~"

2. Page 2, line 3.
Following: "~~60~~"
Strike: "~~30~~"
Insert: "~~60~~"

And, as so amended, be concurred in. Report adopted.

HB 58, third reading copy, be amended as follows:

1. Page 1, line 17.
Following: "~~(2)~~"
Insert: "in first-class cities,"

2. Page 1, line 25.
Following: "~~(2)~~"
Insert: "in first-class cities,"

3. Page 2, line 8.
Following: "~~(2)~~"
Insert: "in first-class cities,"

4. Page 2, line 16.
Following: "~~(2)~~"
Insert: "in first-class cities,"

And, as so amended, be concurred in. Report adopted.

HB 179, be concurred in. Report adopted.

HB 192, be concurred in. Report adopted.

HB 202, third reading copy, be amended as follows:

1. Title, line 5.
Strike: "SECTION"
Insert: "SECTIONS"

2. Title, line 6.

Correctly printed and placed on the members' desks - SB 126, SJR 29.
Report adopted.

I have examined Senate Bill No. 226 introduced by me and find the same to be correct. (Healy)

I have examined Senate Bill No. 245 introduced by me and find the same to be correct. (Mazurek)

I have examined Senate Bill No. 275 introduced by me and find the same to be correct. (Ryan)

I have examined Senate Bill No. 276 introduced by me and find the same to be correct. (Galt)

I have examined Senate Bill No. 279 introduced by me and find the same to be correct. (Goodover)

I have examined Senate Bill No. 309 introduced by me and find the same to be correct. (S. Brown)

BILLS (O'Hara, Chairman):

Correctly enrolled - SB 226, SB 245, SB 275, SB 276, SB 279, SB 309.
Report adopted.

The Senate will please take note that the President did, at the hour of 5:00 p.m., 3/26/81, sign the following bills:

SB 226, SB 245, SB 275, SB 276, SB 279, SB 309, HB 15, HB 98,
HB 112, HB 147, HB 257, HB 302, HB 457, HB 473, HB 492,
HB 525, HB 540, HB 584, HB 625, HB 643, HB 661, HB 711,
HB 833.

Jean A. Turnage
President

Upon motion of Senator Stephens, duly carried, the Senate adjourned at 7:03 p.m. until Friday, March 27, at the hour of 10:00 a.m.

JEAN A. TURNAGE
President of the Senate

JOHN W. LARSON
Secretary of the Senate

March 26, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 364, reference copy, as follows:

1. Title, line 15.
Following: "NECESSARY;"
Insert: "TO PROVIDE AN EXPUNGING OF THE DEFENDANT'S
RECORD AFTER 5 YEARS;"
2. Page 1, line 24.
Following: line 23.
Strike: "shall"
Insert: "may, in the discretion of the court,"
3. Page 1, lines 24 and 25.
Following: "for"
Strike: "1 day"
Insert: "up to 24 hours"
4. Page 1, line 25.
Following: "and"
Insert: "shall be punished"
5. Page 3.
Following: line 25.
Insert: "If there has been no additional conviction
for an offense under this section for a period of
5 years after a prior conviction hereunder, then
such prior offense shall be expunged from the de-
fendant's record."

HOUSE BILL NO. 364

INTRODUCED BY VINCENT, CONN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT--A PERSON--WITH--0.10-PERCENT-ALCOHOL-IN-HIS-BLOOD-IS-GUILTY-OF DRIVING-OR-BEING-IN-CONTROL-OF-A-MOTOR-VEHICLE--WITHIN--THIS STATE-WHILE-UNDER-THE-INFLUENCE-OF-ALCOHOL--TO-INCREASE--AND ESTABLISH-MINIMUM-PENALTIES--TO-LEVY-A-PENALTY-ASSESSMENT-TO BE--USED--TO--FUND--DRIVER-SERVICES-PROGRAMS-AND-A-STATEWIDE ALCOHOL-SAFETY-ACTION-PROGRAM--AMENDING--SECTIONS--61-8-101, 61-8-491, AND 61-8-714, MCA. MANDATORY SENTENCES FOR DRIVING OR BEING IN CONTROL OF A MOTOR VEHICLE WITHIN THIS STATE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO REQUIRE DEFENDANTS TO PARTICIPATE IN AN ALCOHOL INFORMATION COURSE, INCLUDING ALCOHOL OR DRUG TREATMENT IF CONSIDERED NECESSARY; TO PROVIDE AN EXPUNGING OF THE DEFENDANT'S RECORD AFTER 5 YEARS; AMENDING SECTION 61-8-714, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving while intoxicated. (1) Every A person who-is convicted of a violation of 61-8-401 shall MAY, IN THE DISCRETION OF THE COURT, be punished by

imprisonment in the county jail for ~~1-day~~ UP TO 24 HOURS, and SHALL BE PUNISHED by a fine of not less than \$100 or more than \$500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than \$300 or more than \$500 ~~to which may be added--in--the-discretion-of-the-court~~ and by imprisonment for a term not less than 7 days or more than 30 days. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than \$500 or more than \$1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) Except--as--otherwise for--nonsuspendable--part

-2- SECOND PRINTING HB 364

REFERENCE BILL

1 ~~sentences provided in this section, the court may, in its~~
2 ~~discretion, suspend the execution of any sentence imposed~~
3 ~~under subsection (1) this section on the condition that the~~
4 ~~defendant successfully complete a course in a driver~~
5 ~~improvement school approved by the court or an alcohol~~
6 ~~treatment program approved by the department of~~
7 ~~institutions. IN ADDITION TO THE PUNISHMENT PROVIDED IN THIS~~
8 ~~SECTION, REGARDLESS OF DISPOSITION, THE DEFENDANT SHALL~~
9 ~~COMPLETE AN ALCOHOL INFORMATION COURSE AT AN ALCOHOL~~
10 ~~TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS~~
11 ~~WHICH MAY INCLUDE ALCOHOL OR DRUG TREATMENT OR BOTH IF~~
12 ~~CONSIDERED NECESSARY BY THE COUNSELOR CONDUCTING THE~~
13 ~~PROGRAM. Each school or institution COUNSELOR providing such~~
14 ~~education or treatment shall, at the commencement of the~~
15 ~~education or treatment, notify the court that the defendant~~
16 ~~has been accepted by the school ENROLLED IN A COURSE or~~
17 ~~treatment program. If the defendant fails to attend the~~
18 ~~school COURSE or the treatment program, the school or~~
19 ~~institution COUNSELOR shall notify the court of the failure.~~
20 (3)(5) For the purpose of determining the number of
21 convictions under this section, "conviction" means a final
22 conviction, as defined in 45-2-101, or a forfeiture of bail
23 or collateral deposited to secure the defendant's appearance
24 in court, which forfeiture has not been vacated. An
25 offender is considered to have been previously convicted for

1 the purposes of this section if less than 5 years have
2 elapsed between the commission of the present offense and a
3 previous conviction. IF THERE HAS BEEN NO ADDITIONAL
4 CONVICTION FOR AN OFFENSE UNDER THIS SECTION FOR A PERIOD OF
5 5 YEARS AFTER A PRIOR CONVICTION HEREUNDER, THEN SUCH PRIOR
6 OFFENSE SHALL BE EXPUNGED FROM THE DEFENDANT'S RECORD."

-End-